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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

In re R.B., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

R.B.,

Defendant and Appellant.

B240605

(Los Angeles County
Super. Ct. No. FJ45370)

APPEAL from an order of the Superior Court of Los Angeles County.
Philip K. Mautino, Judge. Affirmed.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Assistant Attorney General, Michael R. Johnsen and Dana M.
Ali, Deputy Attorneys General, for Plaintiff and Respondent.

Minor R.B. appeals from the order determining that he committed a residential burglary and was therefore a ward of the juvenile court. Because there was substantial evidence identifying him as one of the burglars, we affirm the order.

FACTS AND PROCEDURAL HISTORY

Around 1:15 p.m. on March 5, 2012, Douglas M. discovered two male intruders inside his Long Beach home. Douglas started yelling at the intruders, who quickly left the house and began walking down nearby 28th Street. Douglas grabbed his cell phone and followed the pair for a short distance, watching as they split up and walked away from each other in separate directions.

Douglas phoned 911 and described the intruders. Both men wore hooded sweatshirts and Douglas never got a good look at their faces because their hoods were pulled up. At some point, however, he saw enough to determine that each was a young African-American male of high school age. The first intruder Douglas saw was about 5-feet, 8-inches tall with a medium build, wearing grey sweatpants and a grey hooded sweatshirt that appeared to have an unusual texture. The second intruder was slightly taller with a slim build, and wore a blue-purple hooded sweatshirt that struck Douglas as unusual.

Separate Long Beach police patrol cars driven by Officers Ignacio Zavala and Nicholas Kent headed toward the area in response to the call. Zavala spotted appellant, 17-year-old R.B., walking down Pacific Avenue about a block and half from Douglas's house. Zavala stopped R.B. because he matched the description Douglas had given, including a blue hooded sweatshirt that R.B. was carrying over his shoulder. Kent saw M.H. walking down 27th Street about three blocks from Douglas's house.¹ Kent stopped M.H. because he was wearing a grey hooded sweatshirt and otherwise fit the description Douglas had given. A search of the youths revealed that each was carrying a single burgundy colored knitted glove inside a pocket of their clothing.

¹ M.H. was also a minor at the time and was also determined to be a ward of the juvenile court along with R.B. M.H. is not a party to this appeal.

A third police officer drove Douglas to the locations where R.B. and M.H. were being detained. Douglas was first taken to where R.B. was being held. Because R.B. was not wearing a sweatshirt, Douglas asked if there was one. The unique, blue-purplish sweatshirt he saw on one of the intruders was produced. The blue sweatshirt convinced Douglas that R.B. had been one of the intruders. At the next stop, Douglas identified M.H. as the other intruder, based in part on the grey hooded sweatshirt M.H. had been wearing. However, both identifications were also based on the fact that each youth's height, build, and race corresponded to that of the intruders, Douglas said.

The Los Angeles County District Attorney's Office filed a petition asking that R.B. be declared a ward of the juvenile court because he burgled Douglas's home.² (Welf. & Inst. Code, § 602.) At the hearing, Douglas and the officers involved in detaining R.B. and M.H. testified to the events mentioned above. An officer also testified that a few hours before Douglas's home was burgled, he was dispatched to the area in response to a call of suspicious persons who looked like they were casing the area. The officer saw R.B., M.H., and a third person seated at a bus stop that was about five blocks from Douglas's house. He questioned them because they resembled the description of the suspicious persons, and then took R.B. and M.H. to a truancy detention center that was five miles away.

The trial court found true the allegations of the petition and ordered R.B. into a long-term camp placement.

DISCUSSION

R.B. contends there was insufficient evidence identifying him as one of the intruders inside Douglas's home because Douglas did not identify him at trial, and because Douglas's field show-up identification was based solely on R.B.'s possession of a generic looking sweatshirt.

² Douglas testified that although no property was missing, he found some valuable microphones right outside his house, suggesting that the intruders took them, but dropped them as they left.

Under the substantial evidence test, we view the evidence and its attendant inferences in the light most favorable to the trial court's order. We do not reweigh the evidence or evaluate the credibility of witnesses. The findings of fact concerning eyewitness identification testimony are binding on us unless the evidence is so weak that it amounts to no evidence at all. (*People v. Mohamed* (2011) 201 Cal.App.4th 515, 521 (*Mohamed*).) We agree with R.B. that a "scintilla" or "some" evidence is legally insufficient. (*Kuhn v. Dept. of General Services* (1994) 22 Cal.App.4th 1627, 1632-1633.)

The fact that Douglas did not get a good enough look at R.B.'s face upon which to base his field identification does not mean there was insufficient evidence to support the trial court's order. Even where an eyewitness does not see the perpetrator's face, identification can be based on other peculiarities such as size, appearance, and similarity of voice, features, or clothing. (*Mohamed, supra*, 201 Cal.App.4th at p. 522, citing *People v. Lindsay* (1964) 227 Cal.App.2d 482, 494; *People v. James* (1963) 218 Cal.App.2d 166, 170 [evidence of identification sufficient even though robber's face was covered by mask, where witnesses identified him based on his Scottish accent, peculiar walk, clothing, and general appearance].)

The defendant in *Mohamed* was convicted of robbery based on field identifications by two eyewitnesses. One witness said that the robber wore a mask that left the bottom of his face visible, allowing her to see the shape of his jaw line, nose, and mouth. During her field identification of the suspect, she told the police she was 80 percent sure Mohamed had been the robber based on his clothing, facial features, and build. She also identified Mohamed at trial. The other witness based his curbside identification on the clothes Mohamed was wearing, and said he was 100 percent certain of his identification.

The *Mohamed* court held there was sufficient evidence to support the verdict. The police detained Mohamed just blocks away from the robbery because he fit the witnesses' descriptions. The first witness identified Mohamed because he was wearing the same clothing, including a do-rag that the witness said matched the fabric used to mask the

robber's face. Mohamed also gave a false alibi when stopped, showing consciousness of guilt. (*Mohamed, supra*, 201 Cal.App.4th at pp. 521-522.) The strength of this evidence was not undermined by the first witness's doubts about her identification, by the fact that neither witness saw the defendant's entire face, or by any inconsistencies in the witnesses' testimony. Instead, those raised issues of credibility that the jury was free to resolve. (*Id.* at p. 522.)

Based on this, we conclude there was sufficient evidence to support the trial court's finding that R.B. had been one of the intruders in Douglas's home. Douglas described R.B.'s sweatshirt as unique, and the trial court agreed when it denied R.B.'s end-of-trial motion to dismiss for lack of evidence. When Douglas was taken to identify R.B., the first thing he asked was whether the suspect had a sweatshirt, suggesting that this piece of clothing was important to Douglas, and was not an afterthought. It was for the court as the trier of fact to weigh the statistical probability that someone else wearing the same unusual sweatshirt would be found nearby shortly after the police were called. (*People v. Sandoval* (1977) 70 Cal.App.3d 73, 86-87.)

We also observe that Douglas's identification was based on more than just the sweatshirt R.B. was wearing. It was also based on his height, build, age, and race. In addition, R.B. and M.H. were detained by the police within minutes of leaving Douglas's house because they matched Douglas's descriptions, and were found at separate locations consistent with Douglas's claim that the pair split up and headed in those directions. Both M.H. and R.B. had been detained nearby earlier in the day because they matched the descriptions of suspicious persons who looked to be casing the area, then returned to the same area after being taken to a truancy center five miles away. Finally, each had a red glove in his clothing when detained. This fact suggested that the two juveniles, at a minimum, knew each other, and even allows for a more sinister explanation consistent with the court's order.

DISPOSITION

The order determining that R.B. committed a burglary and was therefore a ward of the juvenile court is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

GRIMES, J.

SORTINO, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.